HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 944 (M/S) 2006

1. Kripa Shankar Pandey S/o late Sri Hira Pandey,
   Resident of village Ramnagar, Tehsil Kichha,
   District Udham Singh Nagar,
2. Ramesh Chand Chaturvedi S/o Sri Swaminath Chaturvedi,
   Resident of village Ramnagar, Tehsil Kichha,
   District Udham Singh Nagar, ----Petitioners.

Versus

1. District Judge, Udham Singh Nagar,
2. Avadhesh Pandey,
3. Manmohan Pandey,
4. Bal Krishna,
5. Lal Krishna,
6. Harsh Deo Pandey,
   All the respondent no. 2 to 6 sons of Gorakhnath Pandey,
   Residents of village Ramnagar, Tehsil Kichha,
   District Udham Singh Nagar, ----Respondents.

Mr. Vishwa Deepak learned counsel for the petitioners,
Learned Standing Counsel for respondent no. 1,
Smt. Seema Sirohi, learned counsel for respondent nos. 2 to 3.

Hon'ble M.M. Ghildiyal, J.

Heard Mr. Vishwa Deepak learned counsel for the petitioners, Learned Standing Counsel for respondent no. 1 and Smt. Seema Sirohi, learned counsel for respondent nos. 2 to 3.

The present writ petition has been field by the petitioners for the following reliefs:-

a. Issue a writ, order or direction in the nature of certiorari quashing the order dated 13.07.2006 (annexure no. 8 to this writ petition),

b. Issue any other order or direction which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case,

c. Award cost of the petition to the petitioner.

The facts of the case, as emerges out from the record, are that the plaintiff/respondents have filed a civil suit bearing number no. 53 of 2006 Avadhesh Pandey and ors. vs. Kripa Shankar Pandey and ors. before the Civil Judge (Jr. Div.) Udham Singh Nagar, for a decree of permanent injunction against the defendant/ petitioners not to interfere with the peaceful possession of the plaintiffs in respect of the house constructed over Khasra no. 48-ka situated at village Bhamraula, Tehsil-Kichha, district Udam Singh Nagar.

The counsel who has filed the aforesaid suit on behalf of the respondent/plaintiffs has lateron, withdrawn himself from conducting the suit further.

Learned counsel for the respondent/plaintiff has submitted that the real brother of petitioner/defendant is a practicing lawyer at Rudrapur, district Udham Singh Nagar and the respondent/plaintiffs are unable to get the services of any lawyer practicing at Rudrapur, consequently they moved transfer application before the District Judge, U.S. Nagar bearing no. 23 of 2006 for making transfer of the civil suit from district court Rudrapur to any other competent court in the district Udham Sing Nagar. The said transfer application was rejected by learned District Judge on 07.07.2006 on the ground that the respondent/plaintiffs have never sought assistance from legal Service Authority for providing them any counsel.

Aggrieved with the order dated 07.07.2006 passed by learned District Judge, U.S. Nagar, the respondent/plaintiffs preferred review application which was allowed by the District Judge on 13.07.2006.

The precise submission advanced by the learned counsel for the respondent/plaintiffs before this Court is that the learned District Judge, without affording any opportunity of hearing to them, has allowed the said review application.

In these circumstances the District Judge, Udham Singh Nagar is directed to decide the transfer application moved by the respondent/plaintiffs afresh, after hearing both the parties. Both the parties are directed to appear before the District Judge on 22nd August 2006. Both the parties have conceded that no adjournment shall be taken by them on that date. The District Judge shall decide the transfer application as expeditiously as possible. The petitioners are directed to submit a copy of this order before the learned District Judge within a period of one week from today.

With this directed, the writ petition is finally disposed of.

(M.M. Ghildiyal, J.)

August 7, 2006